

REMARKS

Upon entry of these amendments, claims 23, 27-29, and 32-39 are pending in this application. Claim 29 has been amended to correct a typographical error. No new matter has been added.

Applicants note with appreciation that the rejections of claims 36 and 38 and 23 and 27-39 under 35 USC § 112, second paragraph, as being indefinite have been withdrawn.

Rejection under 35 U.S.C. § 102(e)

Claims 23, 27-29 and 32-39 have been rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 5,750,376 (“Weiss”). The Examiner alleges, on page 2 of the Office Action, that the monoclonal antibodies, which are recited in the claims as amended, are merely used in the production of the claimed composition of neural cells enriched for neurosphere initiating stem cells (NS-IC), and are not part of the claimed products. (*See* Office Action at page 2). Applicants disagree.

Claims 23 and 27-29 are composition claims that clearly require that both a monoclonal antibody (*i.e.*, AC133 and/or monoclonal antibody 5E12) and an enriched population of NS-ICs must be present in the claimed compositions.^{1/} There is no teaching in Weiss of cell culture compositions containing a population of neural cells enriched in NS-IC and monoclonal antibody AC133 and/or monoclonal antibody 5E12. Thus Weiss cannot anticipate claims 23 and 27-29. Therefore, this rejection should be withdrawn.

Further, claims 32-39, which depend from claims 23 and 27-29, necessarily contain the limitation that the claimed compositions include monoclonal antibodies AC133 and/or 5E12. Again, as Weiss does not teach or suggest any cell culture compositions containing monoclonal antibodies, much less monoclonal antibody AC133 and/or monoclonal antibody 5E12, Thus,

^{1/} Contrary to the Examiner’s contention, claims 27-29 are not product by process claims. Product-by-process claims are defined as product claims that define the claimed product in terms of the process by which it is made. *See* Manual of Patent Examining Procedure (MPEP) § 2173.05(p).

Claims 27-29 do not include product by process language, and the compositions defined in these claims are not defined in terms of the process by which these products are made. Rather, the compositions of claims 27-29 require three components: 1) a population of neural cells enriched in NS-IC, wherein the NS-IC bind to monoclonal antibody 5E12 or monoclonal antibody AC133 and are CD45⁺, CD45CD34⁺, or CD24⁺; 2) a medium capable of supporting growth of the cells; and at least one monoclonal antibody selected from monoclonal antibody AC133 and monoclonal antibody 5E12.

Applicants contend that these claims are also not anticipated by this reference. As such, this rejection should be withdrawn.

CONCLUSION

Applicants submit that the claims are now in condition for allowance, and such action is respectfully requested.

Respectfully submitted,



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